Laborers International Union of North America, Local 1030, AFL–CIO *and* Exxon Chemical Company and Exxon Research and Engineering Company *and* Perimeter Insulation, Inc. Cases 22–CD–603 and 22–CD–604

August 31, 1992

DECISION AND DETERMINATION OF DISPUTE

BY MEMBERS DEVANEY, OVIATT, AND RAUDABAUGH

On March 11, 1992,[1] amended charges in this 10(k) proceeding were filed by Employers Exxon Chemical Company and Exxon Research and Engineering Company (Exxon) in Case 22–CD–603, and by Employer Perimeter Insulation, Inc. (Perimeter) in Case 22–CD–604. The charges allege that the Respondent, Laborers International Union of North America, Local 1030, AFL–CIO (Laborers Local 1030), violated Section 8(b)(4)(D) of the National Labor Relations Act by engaging in proscribed activity with an object of forcing Exxon and Perimeter to assign certain work to employees it represents rather than to employees represented by International Association of Heat and Frost Insulators and Asbestos Workers, Local 32, AFL–CIO (Asbestos Workers Local 32). The hearing was held April 7, 1992, before Hearing Officer Joseph Calafut. Thereafter, the parties filed briefs in support of their position.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board affirms the hearing officer's rulings, finding them free from prejudicial error. On the entire record, the Board makes the following findings.

I. JURISDICTION

The Employer, Perimeter Insulation, Inc., is a New Jersey corporation with an office and place of business in Middlesex, New Jersey, where it is engaged in asbestos abatement and reinsulation. It annually derives gross revenues in excess of $1 million and purchases and receives goods and materials valued in excess of $50,000 directly from points located outside the State of New Jersey. The parties stipulate, and we find, that Perimeter is engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that Laborers Local 1030 and Asbestos Workers Local 32 are labor organizations within the meaning of Section 2(5) of the Act.

II. THE DISPUTE

A. *Background and Facts of Dispute*

Exxon Chemical Company has contracted with Perimeter for asbestos removal and reinsulation work at Exxon's Linden, New Jersey jobsite. Perimeter's contract at Linden covers removal of asbestos, primarily from pipes and ducts, and reinsulation with nonasbestos materials. Exxon Research and Engineering Company has contracted with Perimeter for asbestos removal and reinsulation work at Exxon's Florham Park, New Jersey facility. Perimeter's contract at Florham Park covers removal of asbestos-containing material in return air systems, pipes, and ducts and reinsulation with nonasbestos materials.

Perimeter uses Asbestos Workers Local 32 members to perform this work. Perimeter has had a collective-bargaining agreement with Asbestos Workers Local 32 since 1984. The current agreement covers the period September 19, 1990, through September 18, 1993. Perimeter successfully bid for the work in question using Asbestos Workers Local 32 wage rates. Perimeter does not have a collective-bargaining agreement with Laborers Local 1030. Exxon does not have a collective-bargaining agreement with either Laborers Local 1030 or Asbestos Workers Local 32.

The parties stipulated that on February 18 and 19, Laborers Local 1030 picketed the Perimeter worksite at Exxon's Linden facility with signs that said, ''Informational to the Public, Perimeter asbestos work at this job site does not have a collective bargaining agreement with Laborers Local 1030 AFL–CIO.'' In smaller print the placard stated, ''This sign is not intended to interfere with nor restrain nor coerce the rights of anyone leaving or entering the job.'' The parties further stipulated that James Castaldo, business manager of Laborers Local 1030, made demands on both Perimeter and Exxon for the asbestos abatement work being performed by Perimeter at Exxon's Linden and Florham Park sites. Asbestos Workers Local 32 Business Manager James Dwyer testified that employees represented by Local 32 claim the work that they are currently performing at Exxon's Linden and Florham Park sites and would undertake all lawful means to protect it.

Exxon Project Manager Rich Palluzi testified as follows concerning several phone conversations with Castaldo from December 1991 through February 1992. Castaldo called Palluzi in December to obtain information about the job being bid at Florham Park. Castaldo told Palluzi that it was clearly Laborers Local 1030's work and requested that Exxon include nine Laborers Local 1030 signatory contractors on the bid list. In January 1992, Castaldo demanded that the work at Florham Park be done by employees represented by Laborers Local 1030 and he told Palluzi that the work

[1] All dates are in 1992 unless otherwise indicated.

''would go most efficiently and most effectively with no problems'' if a Laborers Local 1030 contractor was awarded the job.

According to Palluzi's testimony, Castaldo called him again in February after learning that Exxon had awarded the Florham Park work to Perimeter, ''the same company that did the work in Linden.'' Castaldo told Palluzi that ''there clearly was going to be problems'' with the job and that he had tried to work out a solution by submitting a list of contractors, but Exxon had not been interested in solving the problem. Palluzi testified that ''[i]t was very clear in context that [Castaldo] meant that there was going to be a labor dispute, picketing and just general dispute between the two unions'' because shortly after this conversation concerning Laborers Local 1030 demands for the Florham Park work, Laborers Local 1030 engaged in the February 18 and 19 picketing of Perimeter's worksite at Exxon's Linden facility.[2]

Perimeter President John Hreha also testified that Castaldo called his office in February and claimed the Florham Park work. Hreha informed Castaldo that Perimeter was an Asbestos Workers Local 32 contractor. According to Hreha, Castaldo then informed him that there was an International agreement providing that the Florham Park job was Laborers Local 1030 work and ''if [Perimeter] didn't use his people there were going to be problems.'' Castaldo was asked about this conversation on cross-examination by Asbestos Workers Local 32.

> Q. Now in this recent conversation did you threaten him with problems there?
>
> A. I told him that he would do what he has to do and I'll do what I have to do, there was no verbal threats.
>
> Q. Well what did you mean by that, when you say I'll do what I have to do, what did you mean by that?
>
> A. Put up an informational picket line, that's the only recourse I have, you're familiar with them aren't you?

The record establishes that on April 17, 1985, the International Association of Heat and Frost Insulators and Asbestos Workers and the Laborers' International Union executed an International agreement to prevent jurisdictional disputes with respect to the removal of all asbestos-containing materials.[3] The parties stipulated that Exxon was not bound by or signatory to this International agreement.

The record also contains an August 19, 1991 letter from Angelo Fosco, general president of Laborers International Union, to Castaldo stating that ''on October 1, 1987 the Laborers' International Union awarded jurisdiction over all aspects of asbestos remediation work to your Local Union.'' This letter further states, ''Our records reflect that your Local Union has steadfastly refused at all times to enter into any agreement with the Asbestos Workers Union or to accept any such jurisdictional proposal made by any International Union.'' The letter concludes that under these circumstances the ''only governing instrument'' is the collective-bargaining agreement between Laborers Local 1030 and its employers covering asbestos abatement work.

B. *Work in Dispute*

The work in dispute is the asbestos abatement work being performed by Perimeter at Exxon jobsites located in Linden and Florham Park, New Jersey.

C. *Contentions of the Parties*

Laborers Local 1030 contends that the April 17, 1985 International agreement constitutes an agreed-upon method for resolution of the dispute which is binding on the parties. Laborers Local 1030 submits that, pursuant to the 1985 International agreement, it may clearly claim the work being conducted by Perimeter with Asbestos Workers Local 32 members at both Exxon facilities.

---

[2] Palluzi also testified that Laborers Local 1030 picketed Exxon's Linden facility on several occasions in 1988 and on at least one or more occasions in 1989 with the same, if not identical, informational picket signs. Palluzi stated that the picketing was engendered by Castaldo's demand for the same work that Perimeter was performing at that time pursuant to its contractual relationship with Exxon.

[3] Jt. Exh. 3. This International memorandum of understanding provides:

1. The removal of all insulation materials, whether they contain asbestos or not, from mechanical systems (pipes, boilers, ducts, flues, breechings, etc.) is recognized as being the exclusive work of the Asbestos Workers.

2. On all mechanical systems (pipes, boilers, ducts, flues, breechings, etc.) that are going to be scrapped, the removal of all insulating materials whether they contain asbestos or not shall be exclusive work of the Laborers.

3. The removal of all asbestos-containing materials from walls, ceiling, floors, columns and all other non-mechanical structures and surfaces, etc., is recognized as being the exclusive work of the Laborers.

4. The term ''removal'' as used in this Agreement shall not include the sealing, labeling and dropping of scrap material into the appropriate containers. After drop, final disposal shall be the work of the Laborers.

5. The loading at the designated area of all materials that have been removed, bagged and tagged, as well as cleanup and all unloading, burying and other work required at the disposal site is recognized as being the exclusive work of the Laborers.

The agreement was amended in 1988 to delete the word ''not'' from par. 4. The agreement requires that the Local Unions attempt to settle any dispute and, if they are unable to arrive at a settlement, the Locals will submit their positions to the Internationals for investigation and attempted dispute resolution. If the Internationals cannot resolve the dispute, it will be referred to the offices of the general presidents.

Both Exxon and Perimeter contend that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated. They argue that any ambiguity in Castaldo's February 1991 statements that there ''were going to be problems'' if Laborers Local 1030 did not perform the asbestos abatement work at the Florham Park facility was resolved by Laborers Local 1030's subsequent picketing at Exxon's Linden facility on February 18 and 19 to obtain the work in dispute. They deny the existence of any agreed-upon method for resolution of this dispute that is binding on the parties. They contend that the August 19, 1991 letter from the Laborers International to Laborers Local 1030 constituted an abandonment, repudiation, and termination of the 1985 International agreement. They conclude that the work in dispute should be performed by employees represented by Asbestos Workers Local 32 based on factors of collective-bargaining agreements; employer preference and past practice; economy and efficiency of operations; skills, training, and expertise concerning the performance of both asbestos removal and reinsulation work; and industry and area practice.

Asbestos Workers Local 32 adopts the brief filed on behalf of Exxon and Perimeter denying the existence of any agreed-upon method for resolution of this dispute and affirming that Asbestos Workers Local 32 members are properly assigned the work in dispute.

D. *Applicability of the Statute*

Before the Board may proceed with a determination of a dispute under Section 10(k) of the Act, it must be satisfied that there is reasonable cause to believe that Section 8(b)(4)(D) has been violated and that the parties have not agreed on a method for the voluntary adjustment of the dispute. We find that there is reasonable cause to believe that one purpose of Laborers Local 1030's picketing of the Perimeter worksite at Exxon's Linden facility on February 18 and 19 was to force these Employers to reassign particular asbestos abatement work at Exxon's Linden and Florham Park facilities to members of Laborers Local 1030 rather than to Perimeter employees represented by Asbestos Workers Local 32. As indicated, the parties stipulated that Laborers Local 1030 made demands on both Perimeter and Exxon for the disputed work being performed by Perimeter at Exxon's Linden and Florham Park sites. The Board has held that a jurisdictional dispute exists within the meaning of Sections 8(b)(4)(D) and 10(k) when a union pickets for the purpose of obtaining an employer's agreement to a contract that assigns to employees represented by the picketing union work already assigned to other employees at the time of the contract demand and picketing. *Operating Engineers Local 825 (Building Contractors Assn.)*, 118 NLRB 978, 981, 983–984 (1957).

Laborers Local 1030 does not claim that there is no reasonable cause to believe that it violated Section 8(b)(4)(D) because its picketing at Linden was for the purpose of advising the public that the Employers did not have a contract with Laborers Local 1030. We note, however, that even assuming, arguendo, that the picketing had an informational objective, it is well settled that, as long as one object of picketing is to force an employer to assign particular work to employees represented by a union, rather than to the employer's employees, the picketing comes within the scope of Section 8(b)(4)(D). *Carpenters (Dooley Construction)*, 300 NLRB 878, 880 (1990). See also *Teamsters Local 50 (Schnabel Foundation)*, 295 NLRB 68, 70 (1989). We find that the Laborers Local 1030's picketing at Linden had such an object.

We also find reasonable cause to infer that Laborers Local 1030's oblique reference to unspecified problems at Florham Park meant unlawful picketing as subsequently occurred at Linden. Thus, in February 1992, Laborers Local 1030 threatened Exxon and Perimeter that if they did not use Laborers Local 1030 members to perform the Florham Park work, there ''were going to be problems'' with the job. Vague or guarded threats which are broad enough to encompass the possibility of illegal secondary action are unlawful where the words used are given meaning and colored by subsequent unlawful conduct attributable to the respondent. See generally *Electrical Workers IBEW Local 5 (Jonel Construction)*, 164 NLRB 455 (1967). The critical considerations are the specific language used and surrounding conduct and events. See generally *Carpenters (Apollo Dry Wall)*, 211 NLRB 291 fn. 1 (1974).

We note that Laborers Local 1030's picketing of Perimeter's worksite at Exxon's Linden facility, where Perimeter was performing the same type of work for Exxon, occurred shortly after Laborers Local 1030 threatened both Exxon and Perimeter with unspecified problems if its members were not used to perform the work at the Florham Park job. The Linden picketing thus lent meaning to the alleged threats concerning Florham Park and left little doubt as to what kind of ''problems'' would follow if Exxon and Perimeter failed to accede to Laborers Local 1030's demands to reassign the disputed work to its members. Cf. *Laborers Local 1191 (Morrison Co.)*, 209 NLRB 310, 311 (1974). In fact, as noted, Castaldo expressly acknowledged the nexus between his threats that there were going to be problems at Florham Park if his people were not used to perform the work and the picketing shortly thereafter at Linden.[4]

[4] We also note that the Respondent does not dispute in this proceeding that there is reasonable cause to believe that a violation of Sec. 8(b)(4)(D) has occurred.

We further find that there is no agreed-upon method for the voluntary adjustment of the dispute to which all parties are bound. An agreement that constitutes ''an agreed method of voluntary adjustment,'' and thus deprives the Board of 10(k) jurisdiction, must be binding on all parties to the dispute. An employer being picketed or threatened to force reassignment of disputed work is a ''party'' to the dispute. In the absence of the employer's agreement to be bound by the private mode of settlement, the Board may properly proceed to a 10(k) hearing. *NLRB v. Plasterers Local 79 (Southwestern Construction)*, 404 U.S. 116 (1971).

The Board has consistently held that an employer that is not a party to an International agreement purporting to award work to one union is not bound by that agreement. *Laborers Local 132 (Brockway Glass)*, 224 NLRB 117, 119–120 (1976). Neither Exxon nor Perimeter is a party to the April 17, 1985 International agreement between the International Association of Heat and Frost Insulators and Asbestos Workers and the Laborers International that purports to govern here. The collective-bargaining agreement between Perimeter and Asbestos Workers Local 32 makes no reference to this International agreement, and there is no contention or evidence showing that the Employers are otherwise bound by that agreement. In fact, the parties stipulated to the contrary.

We find that the 1985 International agreement does not constitute an agreed-upon method for the voluntary adjustment of this dispute to which all parties are bound. No party contends, and the record contains no evidence showing, that there exists any other agreed-upon method for the voluntary adjustment of this dispute that binds all the parties. Accordingly, we find that this dispute is properly before the Board for determination under Section 10(k) of the Act.

E. *Merits of the Dispute*

Section 10(k) requires the Board to make an affirmative award of disputed work after considering various factors. *NLRB v. Electrical Workers IBEW Local 1212 (Columbia Broadcasting)*, 364 U.S. 573 (1961). The Board has held that its determination of a jurisdictional dispute is an act of judgment based on common sense and experience, reached by balancing the factors involved in a particular case. *Machinists Lodge 1743 (J. A. Jones Construction)*, 135 NLRB 1402 (1962).

The following factors are relevant in making the determination of this dispute.

1. Certifications and collective-bargaining agreements

Neither Laborers Local 1030 nor Asbestos Workers Local 32 has been certified by the Board as the collective-bargaining representative of any of the employees involved in this dispute. We conclude that this factor does not favor an award of the disputed work to employees represented by either union.

Perimeter has had a collective-bargaining relationship with Asbestos Workers Local 32 since about 1984. Perimeter's current agreement with Asbestos Workers Local 32 is effective September 19, 1990, through September 18, 1993. Article II of the collective-bargaining agreement, entitled ''Work Jurisdiction,'' covers the asbestos removal and reinsulation work currently being performed by Asbestos Workers Local 32 members for Perimeter at Exxon's Linden and Florham Park facilities. Perimeter President John Hreha affirmed that this contract obligated him to use Asbestos Workers Local 32 members to perform the asbestos removal and reinsulation work. He also testified that Perimeter bid for the work in question using Asbestos Workers Local 32's contractual wage and benefit package. There is no collective-bargaining agreement between Perimeter and Laborers Local 1030.[5]

We conclude that the factor of collective-bargaining agreements favors an award of the disputed work to employees represented by Asbestos Workers Local 32.

2. Employer preference and past practice

John Hreha testified that since Perimeter's inception in 1984, it has performed more than 100 asbestos removal jobs. Perimeter has employed only Asbestos Workers Local 32 members for this work. Hreha affirmed that Perimeter has been satisfied with the performance of Asbestos Workers Local 32 workers.

Hreha testified that Perimeter's preference was to assign the disputed work to its own employees represented by Asbestos Workers Local 32. Palluzi testified that Exxon also had a preference for Asbestos Workers Local 32 to perform the asbestos removal and reinsulation work at both facilities.

We find that the factors of employer preference and past practice favor an award of the work to employees represented by Asbestos Workers Local 32.

3. Economy and efficiency of operations

Palluzi testified that Exxon has a real economic interest in ensuring that the time and materials contracts at issue were performed as efficiently as possible because any cost inefficiencies were immediately passed on to Exxon. Palluzi cited the ability of Asbestos Workers Local 32 to provide a more effective way of performing the work for a variety of reasons. He emphasized that, unlike Laborers Local 1030 employees, Asbestos Workers Local 32 employees could perform reinsulation work. Palluzi stated that there is significant interplay between asbestos removal and reinsulation and that it is much more efficient if the

[5] Laborers Local 1030 introduced a copy of its standard agreement as Jt. Exh. 2.

same contractor performs both functions. Exxon desired to have only one union on site because that would facilitate flexibility in job assignment and craft interchange, eliminate problems engendered by jurisdictional disputes between unions, and provide payroll savings associated with only one set of supervisors.

Hreha testified that because Laborers Local 1030 employees cannot do reinsulation work, Perimeter eschewed splitting the work between the Unions. That would require two sets of foremen. Hreha also testified that poor historical interaction between the two Locals would result in further inefficiency.

We find that the factor of economy and efficiency of operation favors an award of the disputed work to employees represented by Asbestos Workers Local 32.

4. Area and industry practice

Both Locals are engaged in asbestos abatement work within the State of New Jersey. Therefore, this factor does not favor an award of the disputed work to employees represented by either Union.

5. Relative skills and training

Members of both Locals possess the required New Jersey State certification for asbestos abatement work, and both Locals provide regular training for members in asbestos removal work. Therefore, relative skills and training do not favor an award of the disputed work to employees represented by either union.

6. The interunion agreement

We do not accord the 1985 International agreement significant weight for several reasons. Laborers International Union's August 19, 1991 letter appears to terminate the agreement. The agreement is not referred to in Perimeter's extant contract with Asbestos Workers Local 32. There is no evidence that Exxon or Perimeter otherwise have agreed to be bound by the agreement. Finally, both Locals continue to claim the work in dispute.

Conclusions

After considering all the relevant factors, we conclude that employees represented by Asbestos Workers Local 32 are entitled to perform the disputed work. We reach this conclusion relying on the factors of collective-bargaining agreements, employer preference and past practice, and economy and efficiency of operations. In making this determination, we are awarding the work to employees represented by Asbestos Workers Local 32, not to that Union or its members. The determination is limited to the controversy that gave rise to this proceeding.

DETERMINATION OF DISPUTE

The National Labor Relations Board makes the following Determination of Dispute.

1. Employees of Perimeter Insulation, Inc., represented by International Association of Heat and Frost Insulators and Asbestos Workers, Local 32, AFL–CIO, are entitled to perform the asbestos abatement work at Exxon Chemical Company and Exxon Research and Engineering Company jobsites located in Linden and Florham Park, New Jersey.

2. Laborers International Union of North America, Local 1030, AFL–CIO is not entitled by means proscribed by Section 8(b)(4)(D) of the Act to enforce Perimeter Insulation, Inc. to assign the disputed work to employees represented by it.

3. Within 10 days from this date, Laborers International Union of North America, Local 1030, AFL–CIO shall notify the Regional Director for Region 22 in writing whether it will refrain from forcing Perimeter Insulation, Inc., by means proscribed by Section 8(b)(4)(D), to assign the disputed work in a manner inconsistent with this determination.